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Searching for Security, Casey Fires at the Press

By James Bamford

BOSTON

It sits on the statute books like an unexploded bomb left over from World War II. Until recently few people had ever heard of the communications intelligence statute. Today it is becoming one of the most feared laws in journalism. Within the last few months Central Intelligence Agency Director William J. Casey has used the statute to threaten the Washington Post, request prosecution of an NBC reporter and warn two authors that their yet-to-be published books might violate the law. It is no idle threat. Penalty for violation is a prison term of up to 10 years and a fine up to $10,000.

Known formally as Title 18, Section 798 of the U.S. Code, the communications intelligence statute makes it a crime for anyone to publish or disclose *any* classified information dealing with U.S.—or even foreign—code-making, code-breaking or eavesdropping activities. These are the principal activities of the supersecret National Security Agency, the statute's major beneficiary. Although the law has never been used against anyone in the media, and only in a few espionage cases, that will change if Casey has his way.

On June 19, Casey contacted Seymour M. Hersh, author of a book (due in the fall) on the downing of Korean Airlines Flight 007 over the Soviet Union, and Robert U. Woodward, who is working on a book on Casey and his CIA; he warned both writers against release of any information involving communications intelligence. This warning was apparently intended to cause the authors to reconsider some of the material in their books and put them on notice should an indictment eventually be sought.

Casey's warning to Hersh points out one significant problem with the statute. It is almost impossible to write about a major incident, such as the KAL tragedy, without touching in some way on communications intelligence. Originally, the statute was intended to cover only a very small, narrow area of intelligence. But today the situation is reversed. Communications intelligence is the *principal* form of intelligence collected. Information picked up by human agents is minuscule by comparison. Thus, a hard-hitting story about the bombing of Libya, the John A. Walker Jr. and Ronald W. Pelton spy cases or Middle East terrorism would all require significant discussion of communications intelligence.

From the start, the Reagan Administration seemed anxious to dust off the old statute and get some use out of it. The first case involved a book I had written on the National Security Agency, "The Puzzle Palace," which, the government claimed, contained classified communications intelligence information. Part of this information came from a report that the Justice Department had declassified and released to me, only to have it reclassified as "top secret" by the NSA. At the urging of the NSA, the Justice Department threatened prosecution under the Espionage Act. But since the executive order on secrecy specifically said that a declassified document could not be reclassified, they decided they could not prevent publication.

Within days of the September, 1982, publication, however, the NSA conducted an internal "damage assessment" and recommended to the Justice Department that I be prosecuted under the communications intelligence statute. The Justice Department, after conducting its own review, declined to act. Nonetheless, the NSA sent several agency security officials to one library I used and ordered them to remove from shelves and stamp "secret" many unclassified, non-government research materials that I had quoted from.

The statute was also used following the arrest of Pelton, a former NSA employee who was a specialist in converting intercepted Soviet signals into signals compatible with NSA receiving equipment. The Washington Post received early details on one operation that Pelton had revealed to the Soviets. This project, code-named Ivy Bells, involved a submarine penetrating the Sea of Okhotsk, in the Soviet Far East. Once on the bottom, the sub would attach a "bug" to an undersea communications cable. It would be similar to a Soviet sub attaching a listening device to a cable running from Florida to Texas under the Gulf of Mexico.

As a result of a warning by Casey and NSA Director Lt. Gen. William E. Odom that publication might violate the communications intelligence statute, the newspaper held off publication several times and finally released a less-detailed version of their story. A day earlier, James Polk of NBC News had mentioned a submarine mission in Soviet waters and an angry Casey formally recommended his prosecution under the statute.

The shadowy origins of the law date back to World War II and, contrary to popular belief, its principal focus was not protection from foreign agents, but journalists. On June 9, 1944, three days after D-Day in Europe and with the end of the war in sight, a highly secret report was prepared recommending new laws "to stop the anticipated avalanche of postwar publicity which will jeopardize the activities of American intelligence agencies."

What concerned the report's authors were the frequent communications intelligence leaks in books and in the press as long ago as the early 1930s. Probably the biggest leak was on June 7, 1942, when the Chicago Tribune disclosed that U.S. success in the battle of Midway was due to communications intelligence. The Navy recommended prosecution of the Tribune's publisher, managing editor and the reporter who broke the story, but the grand jury failed to bring an indictment.

With this incident in mind, the authors of the report recommend a strict law "first, to prevent publicity leaks, and second, to penalize them." The problem with existing espionage laws was that it was necessary to prove an "intent" to injure the United States, or a "reason to believe" that such injury will result. Therefore, sponsors proposed that the new law against leaks of communications intelligence information should eliminate "intent" and make mere publication sufficient for a violation.

After several defeats in Congress, the communications intelligence statute was finally enacted in 1950. Since then it has been used in an occasional spy trial and, on rare occasions, as a threat against journalists. The Nixon Administration, for example, tried to use it in the Pentagon Papers case and the Ford Administration considered using it against three journalists, free-lancer Tad Szulc, the New York Times' Nicholas M. Horrock and Woodward of the Washington Post. Wiser views prevailed, however, and no action was ever taken.

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James Bamford, the author of "The Puzzle Palace," a study of the National Security Agency, writes frequently about intelligence issues.

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By placing the burden on the final link in the chain, the government is taking the easy way out. To a large degree the constant battle against leaks is designed more to prevent embarrassment at home than to keep information from the Soviets. Leaks do show a lack of control in an Administration but they are usually of minor interest to the Soviet Union, which obtains far more useful information secretly from the agencies themselves. The real problem is not an unruly press but the intelligence community's utter incompetence when it comes to keeping its secret documents away from the Soviets.

For example, last year the Administration threatened prosecution of any journalist who even speculated about a new spy satellite being launched by the space shuttle at Cape Canaveral. Yet, a few years earlier, a CIA employee just walked out of the agency's headquarters with the operations manual to the superadvanced KH-11 spy satellite. He sold it to the Soviets for a paltry $3,000. It was later discovered that the agency had lost about 12 other KH-11 manuals, including one checked out to the director.

While the intelligence community spends countless hours thinking of ways to tighten the front door and prevent an occasional leak, the Soviets are having a field day cleaning house through the wide open back door. Christopher J. Boyce had no problem walking out of TRW Inc. with reams of the nation's most secret documents dealing with spy satellites and NSA "key cards" that allow the Soviets to penetrate our code system. The Walker spy ring was selling secret documents and key cards to the Soviet Union by bulk. Michael L. Walker, for example, was found with 15 pounds of secrets near his bunk when he was finally arrested. On 10 previous occasions, however, he had successfully left his ship with stacks of documents. Another Navy employee, Jonathan Jay Pollard, literally walked out of Navy Intelligence headquarters with suitcases of top-secret documents that he later sold to the Israelis.

It is not the occasional leak in the press but the frequent gusher from the intelligence community that keeps the Soviets floating in U.S. secrets. The Administration's war against journalists and authors simply serves as a smoke screen. Instead of reviving an old law to go after the press, the Administration would do better looking into ways to protect security.

It should be more difficult to walk out of CIA headquarters with a KH-11 manual than to walk out of a local library with a battered book, but it isn't. The technology is available to design copiers, paper and ink that would make unauthorized photocopying far more difficult, and there are various ways, such as magnetization, to detect a document being sneaked out.

The commission set up by Secretary of Defense Caspar W. Weinberger last year to look into the problems of security issued a recommendation to increase funding for research into "devices and equipment which could prevent or detect the unauthorized removal or reproduction of classified information." This was one of the few recommendations Weinberger decided to reject. The Administration apparently feels its money is better spent trying to jail Hersh and Woodward. □

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